No. 80-1857

ALEXANDER L. STEV
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

Citizens Concerned for Separation of Church and State,

Petitioner,

v.

City and County of Denver,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

REPLY BRIEF OF PETITIONER

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FOR: The American Civil Liberties Union Foundation of Colorado, Inc.

Petitioner, in its Reply Brief, wishes to correct an inexcusable misstatement of fact appearing in Respondent's Brief at page 2, n. 1, where it is stated that, "At a hearing before the trial judge on October 14, 1980, counsel for the Petitioner candidly stated that no member of the Petitioner association was even present at the trial." On the contrary, members of the Petitioner association were present throughout the trial, as counsel for Petitioner informed the trial court at the October 14, 1980, hearing. The relevant portions of the transcript of that hearing, pages 6-7, 13, are as follows:

> Mr. SHAROFF:
> ****
> The people he [Mr. Chase] called as witnesses, he knew then weren't members of the association, the plaintiff association.

So it wasn't a mere slip in

failing to ask a question to the member of the association, but a failure to even have in the courtroom those people who were members of the plaintiff organization.

THE COURT: Why didn't you raise the issue at this hearing?

MR. SHAROFF: Frankly, we didn't consider it until after the case.

THE COURT: You assumed jurisdiction just like I did?

Mr. SHAROFF: Yes, and you know, that would have saved time had we raised it, but frankly we didn't think about it until after December 17th.

****

Mr. CHASE: ...They did have the opportunity to put on whatever they wanted, and chose to waive it. That's what I find so appalling about what happened in this case is that had they not done that, had they filed the responsive pleading, had they put everybody on notice that this issue of standing was in fact at issue we wouldn't be here today. We would have put on evidence.

We had clients in the courtroom throughout the proceedings. Our clients are in the courtroom today. As a matter of fact it is not as if we held back. It is just frankly we didn't think that it was at issue, as it was not. [Emphasis added.]

Respectfully submitted,

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